

COMPLAINT
(for filers who are prisoners without lawyers)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN



(Full name of plaintiff)

SUSAN DRAGISICH

v.

Case Number:

(Full name of defendant(s))

ADVOCATE AURORA HEALTH

(to be supplied by Clerk of Court)

A. PARTIES

1. Plaintiff is a citizen of WISCONSIN, and is located at

OAKHILL CORRECTIONAL INSTITUTION (State)

5212 COUNTY HIGHWAY M OREGON, WI 53575

(Address of prison or jail)

2. Defendant ADVOCATE AURORA HEALTH

(Name)

is (if a person or private corporation) a citizen of DELAWARE

(State, if known)

and (if a person) resides at 750 W. VIRGINIA ST. P.O. BOX 341880

MILWAUKEE, WI

(Address, if known)

53204

worked for ADVOCATE AURORA Health
(Employer's name and address, if known)

B. STATEMENT OF CLAIM

1. Who violated your rights;
2. What each defendant did;
3. When they did it;
4. Where it happened; and
5. Why they did it, if you know.

[illegible]

Complaint OF DUSAN DRAGISICH Page 1 of 6

1. PLAINTIFF BRINGS THIS CASE TO ADDRESS DEFENDANTS TRANSMISSION AND DISCLOSURE OF PLAINTIFFS CONFIDENTIAL PERSONAL IDENTIFIABLE INFORMATION ("PII") AND PROTECTED HEALTH INFORMATION ("PHI") (COLLECTIVELY REFERRED AS PRIVATE "INFORMATION" OR "PII AND PHI") TO META PLATFORMS, INC. d/b/a META ("FACEBOOK") AND/OR GOOGLE LLC d/b/a GOOGLE ("GOOGLE") VIA TRACKING PIXELS ("TRACKING PIXELS" OR PIXEL) INSTALLED ON DEFENDANTS WEBSITE, LIVE WELL APP, AND MY CHART PORTAL (COLLECTIVELY REFERRED TO AS "WEBSITE").
2. PLAINTIFFS PRIVATE INFORMATION WAS UNLAWFULLY INTERCEPTED, AND THE INFORMATION TRANSMITTED TO AND RECEIVED BY THIRD-PARTIES, INCLUDING THE FOLLOWING IP ADDRESSES AND COOKIE IDENTIFIERS; DATES, TIMES, AND/OR LOCATIONS OF SCHEDULED APPOINTMENTS; PROXIMITY TO AN ADVOCATE UROKA HEALTH LOCATION; INFORMATION ABOUT SPECIFIC PROVIDERS; TYPES & APPOINTMENTS OR PROCEDURES; THE BUTTONS, LINKS, PAGES, AND TABS THAT PATIENTS CLICK AND VIEW; COMMUNICATIONS BETWEEN PATIENTS AND OTHERS THROUGH MY CHART, WHICH MAY INCLUDE FIRST AND LAST NAMES AND MEDICAL RECORD NUMBERS; INSURANCE INFORMATION; AND, IF A PATIENT HAD A PROXY MY CHART ACCOUNT, THE FIRST NAME AND THE FIRST NAME OF THE PROXY.
3. DEFENDANT ADMITS THAT THE PRIVATE INFORMATION OF AT LEAST 3,000,000 INDIVIDUALS WAS IMPROPERLY AND UNLAWFULLY DISCLOSED TO FACEBOOK AND GOOGLE WITHOUT THOSE INDIVIDUALS KNOWLEDGE OR CONSENT 1.
4. DEFENDANT IS A NON-PROFIT HEALTHCARE SYSTEM WITH 26 HOSPITALS AND 500 CARE SITES LOCATED IN ILLINOIS AND WISCONSIN. 2 DEFENDANT IS ONE OF THE LARGEST HEALTHCARE PROVIDERS IN THE UNITED STATES AND EMPLOYS APPROXIMATELY 75,000 INDIVIDUALS.

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IN ORDER TO PROVIDE MEDICAL TREATMENT AND CARE, DEFENDANT
LECTS AND STORES PATIENTS PRIVATE INFORMATION AND MEDICAL
ORDERS. IN DOING SO, DEFENDANT HAS STATUTORY, REGULATORY,
CONTRACTUAL, FIDUCIARY, AND COMMON LAW DUTIES TO SAFEGUARD
PRIVATE INFORMATION FROM DISCLOSURE AND ENSURE IT
REMAINS PRIVATE AND CONFIDENTIAL. DEFENDANT IS DUTY BOUND
TO MAINTAIN THE CONFIDENTIALITY OF PATIENT MEDICAL RECORDS AND
INFORMATION AND IS FURTHER REQUIRED TO DO SO BY THE
HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996
("HIPAA") AND BY WISCONSIN STATUTES. 3

https://ocrportal.hhs.gov/ocr/breach/breach_report.jsf

<https://www.aurorahealthcare.org/about-aurora>

THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996
("HIPAA"), PUB. L. NO. 104-191, 110 STAT 1936 (1996). (HIPAA)
REGULATIONS OF THE UNITED STATES DEPT OF HEALTH AND SERVICES
PROMULGATED THEREUNDER, AND DESIGNED TO PROTECT THE CONFIDENTIALITY
GUARD AGAINST THE UNAUTHORIZED DISCLOSURE OF MEDICAL RECORDS,
HEALTH CARE INFORMATION, AND OTHER INDIVIDUALLY IDENTIFIABLE
HEALTH INFORMATION.

SEE <https://www.advocatehealth.com/privacy-policy/>? —
2. 190713003.182618276, 1583955525-2405419876.
83955525

PLAINTIFF HAS SOUGHT MEDICAL SERVICES AND/OR TREATMENT FROM THE DEFENDANT. DEFENDANT ADVERTISES ITS ONLINE SERVICES ON ITS WEBSITE, INCLUDING THE LIVEWELL APP AND MYCHART PORTAL, TO ASSIST PATIENTS WITH THEIR MEDICAL CARE, AND THE DEFENDANT ENCOURAGED ITS PATIENTS TO USE ITS ONLINE SERVICES.

AS A RESULT, PLAINTIFF USED DEFENDANT'S WEBSITE TO: (1) SEARCH FOR PHYSICIANS, INFORMATION ABOUT SPECIFIC MEDICAL CONDITIONS, TREATMENT OPTIONS, SERVICES, AND LOCATIONS; (2) SCHEDULE APPOINTMENTS AND PROCEDURES; (3) RECEIVE AND DISCUSS MEDICAL DIAGNOSES AND TREATMENT FROM THEIR HEALTHCARE PROVIDERS; AND (4) RECEIVE TEST RESULTS, REVIEW MEDICAL RECORDS, AND EXCHANGE INSURANCE INFORMATION.

DEFENDANT'S PRIVACY POLICIES (PRIVACY POLICIES) UNEQUIVOCALLY STATE THAT IT WILL NOT SHARE ITS PATIENTS' PRIVATE INFORMATION FOR MARKETING PURPOSES WITHOUT FIRST OBTAINING THEIR WRITTEN PERMISSION.

AS EXPLAINED PRIOR, DEFENDANT DID DISCLOSE PLAINTIFF'S PRIVATE INFORMATION TO THIRD PARTIES, SUCH AS FACEBOOK AND GOOGLE, AND IN DOING SO VIOLATED ITS OWN PRIVACY POLICY. DEFENDANT'S DISCLOSURE OF THE PLAINTIFF'S PRIVATE INFORMATION CONSTITUTES GROSS VIOLATION OF COMMON LAW AND STATUTORY DATA PRIVACY LAWS.

DEFENDANT DID NOT ACKNOWLEDGE OR OTHERWISE DISCLOSE ITS USE OF THE TRACKING PIXEL AND ITS WIDESPREAD AND BLATANT DISCLOSURE OF PLAINTIFF'S INFORMATION UNTIL OCTOBER 22, 2022, WHICH TIME IT POSTED THE FOLLOWING STATEMENT ON ITS SITE (HEREINAFTER REFERRED TO AS THE NOTICE OF DATA PRIVACY INCIDENT):

At Aurora Health, we are writing to provide transparency in its previous use of the internet tracking technologies, such as Google and Facebook (Facebook) that we and many others in our industry have implemented to understand how patients and others interact with our websites. These technologies disclose certain details of interactions with our websites, particularly for users who are currently logged in to their Google or Facebook accounts and have shared their information with us.

s with these companies. When using some Advocate Aurora Health sites, certain protected health information (PHI) would be disclosed in particular circumstances to ~~specific~~ ~~vendors~~ vendors because of pixels on our websites or applications.

What happened?

In effort to provide high quality services to its community, Advocate Aurora Health uses the services of several third party vendors to measure and evaluate information concerning the trends, preferences of its patients as they use our websites. To do this, pieces of code known as "pixels" were included on certain of our websites or applications. These pixels or similar technologies are designed to gather information that we review in aggregate so that we can better understand patient needs, preferences to provide needed care to our patient population. We learned that pixels or similar technologies installed on our patient portals available through MyChart and LiveWell websites and applications, as well as on some of our scheduling widgets, transmitted certain patient information to the third-party vendors that provided us with the pixel technology. We have disabled or removed the pixels from our platforms and launched an internal investigation to better understand what patient information was transmitted to our vendors.

How do I know if I was affected?

Due to an abundance of caution, Advocate Aurora Health has decided to assume that all patients with an Advocate Aurora Health MyChart account (including users of the LiveWell application), as well as any patients who use scheduling widgets on Advocate Aurora Health platforms, may be affected. Users may have been impacted differently based on their choice of browser; the configuration of those browsers; their blocking, clearing or use of cookies; whether they have Facebook or Google accounts; whether they were logged into Facebook or Google; and the specific actions taken on the platform by the user.

What Information was Involved?

The following information may have been involved: Your IP address; dates, times, and/or locations of scheduling appointments; your proximity to an Advocate Aurora Health location; information about your provider; type of appointment or procedure; communications between you and others through myChart, which may have included your last and first name and your medical record number; information about whether you had insurance; and if you had a proxy myChart account, your first name and the first name of your proxy. Based on our investigation, no social security number, financial account, credit card, or debit card information was involved in this incident.

1. Parsing out Defendant's notice of data security incident, Defendant admitted that its website, including its LiveWell App and myChart portal, contained tracking pixels that secretly enabled the unauthorized transmission and disclosure of Plaintiff's private information to third parties such as Facebook or Google.

2. Defendant also acknowledged the notice of security incident pertains to "all patients with an Advocate Aurora Health myChart account (including users of the LiveWell application), as well as any patients who used scheduling widgets on Advocate Aurora Health's platforms, may have been affected".

3. Third parties, like Facebook or Google, in turn use Plaintiff's private information to target advertisements to Plaintiff based on the private information disclosed by Plaintiff to the Defendant.

At present, Defendant has not provided an exhaustive or complete list identifying every analytics tool it used, and it is unclear if Defendant also transmitted its patients' information to additional ~~and~~ third parties such as LinkedIn, Instagram, TikTok, YouTube, or Twitter, each of whom uses their own analytics tool and tracking pixels.

Accordingly, the purpose of this lawsuit is to enforce Plaintiff's right to protect their private information and seek remedies for the harm caused by Defendant's intentional, reckless, negligent disclosure to third parties.

Background

When an individual visits Defendant's website and submits user information to Defendant, its tracking pixels transmit the user information to third parties, such as Facebook and Google. A pixel is a piece of code that "tracks the people and [the] type of actions they take."⁵

Rebook Retargeting, <https://www.facebook.com/business/goals/retargeting>

Pixels are routinely used to target specific customers by utilizing user data transmitted via pixels to build profiles for the purposes of targeting⁶ and future marketing.

With respect to Defendant's implementation and use of the Facebook pixel, patients' interactions and communications were transmitted to Facebook via both first-party and third-party cookies acting in tandem. In conjunction with this process, a patient's unique and persistent Facebook ID (FID) was transmitted alongside other private information. Defendant sent to Facebook, thereby linking their communications and online interactions to their specific Facebook account for future use and marketing purposes.

"Retargeting" or "Remarketing" is a form of advertising that displays ads or sends emails to previous visitors of a particular website who did not "convert" the visit into a sale or otherwise meet a marketing goal of the website owner.

2. Entities that use Facebook's pixel and other Business Tools - such as Defendant - are required "to have lawful rights to collect, use, and share your data before providing any data to Facebook." SEE Facebook Data Policy, <https://www.facebook.com/privacy/policy/version/20220104/>.

3. Moreover, Facebook's policies expressly provide that businesses using the Facebook pixel will not share data that they "know or reasonably should know... includes Health, Financial Information, or other categories of Sensitive Information" (including any information defined as sensitive under applicable laws, regulations and applicable industry guidelines).

SEE Facebook Business Tools, Term 1(h), <https://www.facebook.com/legal/terms/Businesstools>; Meta Commercial Term 3, <https://www.facebook.com/legal/commercial-terms>.

4. Instead of taking proactive steps to verify that businesses using Facebook pixels obtain the required consent, Facebook uses an "Honor System" under which Facebook assumes these businesses "represent the parent that [they have] provided robust and sufficient prominent notice to users regarding the Business Tool data collection, sharing, and usage." SEE Facebook Business Tools Terms <https://www.facebook.com/legal/terms/Businesstools>

5. Pixels are routinely used to target advertising to specific customers, utilizing the data gathered through the pixel to build profiles for future marketing and retargeting. By design, their purpose and function is to transmit information about an individual website visitor's use of a particular website, app, or webpage, including the individual's communications and interactions.

6. Upon information and belief, Defendant utilized the pixel/data to improve and save costs on its marketing campaign, improve its data analytics, attract new patients, and market new services and/or treatments to its existing patients. In other words, Defendant implemented the tracking pixel to bolster its profits.

operating as Designed, Defendants Tracking Pixels Allowed the private information that plaintiffs submitted to Defendant to be unlawfully used to third parties.

For Example when a website user visits a webpage containing tracking pixels, their device is commandeered, and their communications are illicitly duplicated and transmitted to third parties. Stated differently, Defendants website and tracking pixels purposely altered patients browsers, forcing them to duplicate and redirect HTTP requests to third-party web servers.

The information sent to third-parties as a result of Defendants tracking is included the private information that plaintiff submitted to Defendants website related to their past, present, future health conditions, including, for example, the type and date of a medical appointment and physician. Such private information would allow the third party (e.g. Facebook or Google) to know that a specific patient was seeking confidential medical care, the type of medical care sought. This disclosure would also allow third party to reasonably infer that a specific patient was being treated for a specific type of medical condition such as cancer, HIV, or HIV.

The third party, in turn, sells plaintiffs private information to third-party marketers who online target

"online targeting" is a process that refers to creating advertisement messages that specifically reach out to prospects and customers interested in certain products or services. A target audience has certain traits, demographics and other characteristics, based on products or services the advertiser is promoting. SEE <https://digitalmarketinggroup.com/a-guide-to-online-targeting-which-works-for-our-business/>

last visited JAN. 23, 2023

7. Plaintiff submitted medical information related to their past, present, and future health conditions to Defendant's website, including the LiveWell App and MyChart Portal and used the website to search for physicians, schedule appointments and procedures, receive and discuss medical diagnosis and treatment from their healthcare providers, receive lab results, review medical records, and exchange insurance information.

8. Defendant regularly encouraged plaintiff to use its digital tools, including its website, LiveWell App, and MyChart Portal, to receive healthcare services. In doing so Defendant also directed plaintiffs to its privacy policies, which preclude the transmission or disclosure of private information to unauthorized third parties such as Facebook or Google.

9. Plaintiff provided private information to Defendant in order to receive medical services and with the reasonable expectation that Defendant would protect their private information.

10. At all times that plaintiff visited and utilized Defendant's website, they had a reasonable expectancy of privacy in the private information collected through Defendant's website including that it would remain secure and protected and only utilized for medical purposes. Plaintiff's expectations were entirely reasonable because (1) they are patients; and (2) Defendant is a healthcare provider which is required by common and statutory law to protect its patients' private information. Moreover, plaintiff also relied on Defendant's privacy policies, which do not permit the transmission or disclosure of plaintiff's private information to unauthorized third parties.

11. Defendant further made express and implied promises to protect plaintiff's information and maintain the privacy and confidentiality of communications that patients exchange with Defendant.

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DEFENDANT owed common law, contractual, statutory, AND regulatory
: to keep plaintiffs private information safe, secure, AND confidential.
ermore, By obtaining, collecting, using, AND deriving a benefit from
: private information, Defendant assumed legal AND equitable
: to those individuals to protect AND safeguard that information
7 UNAUTHORIZED disclosure.

However, AS set forth more fully below, Defendant FAILED in its
ations AND promises By using tracking pixels while knowing
Doing so would result in the transmission AND disclosure of
plaintiffs private information to UNAUTHORIZED third parties with
ng history of privacy violations AND misconduct - i.e., Facebook.

plaintiffs private information can - AND likely will - be further
ploited AND disseminated for retargeting, marketing, OR
insurance companies utilizing the information to set insurance rates!

While Defendant willfully AND intentionally incorporated the tracking
into its website, Defendant did NOT disclose to plaintiff that it
was their sensitive AND confidential communications via the
tracking pixel to Facebook OR Google until ON OR AROUND October
2022 8. AS A RESULT, plaintiff WAS UNAWARE that his private
information was being ~~being~~ surreptitiously transmitted AND/OR
passed to Facebook AND Google AS they communicated with
a healthcare provider via the website.

<https://www.wpr.org/data-breach-advocate-aurora-health-system-may-exposed-3m-patients-information>

LAST VISITED JAN 20, 2023

2. DEFENDANT breached its obligations in one or more of the following ways: (i) Failing to Adequately Review its marketing programs and web-based technology to ensure Defendant's website was safe and secure; (ii) Failing to remove or disengage technology that was known and signed to share web-users information; (iii) Failing to obtain the consent of Plaintiff to disclose their private information to Facebook, Google, and others; (iv) Failing to take steps to block the transmission of Plaintiff's private information through tracking pixels; (v) Failing to warn Plaintiff and (vi) otherwise failing to design and monitor its website to maintain the confidentiality and integrity of patient private information.

3. Plaintiff has suffered injury as a result of Defendant's conduct. These injuries include: (i) invasion of privacy, (ii) lost time and opportunity costs associated with attempting to mitigate the full consequences of the tracking pixel; (iii) loss of benefit of the bargain, (iv) diminution or deprivation of value of the private information, (v) statutory damages, and (vi) the continued and ongoing risk of exposure of his private information.

8. Plaintiff seeks to remedy these harms and bring causes of action for (1) INVASION OF PRIVACY - INTRUSION INTO SECLUSION; (2) INVASION OF PRIVACY - PUBLICATION OF PRIVATE FACTS; (3) UNJUST ENRICHMENT; (4) BREACH OF IMPLIED CONTRACT; (5) BREACH OF CONFIDENCE; (6) VIOLATIONS OF THE ELECTRONICS COMMUNICATION PRIVACY ACT ("ECPA") 18 U.S.C. § 2511(1) - UNAUTHORIZED INTERCEPTION, USE, AND DISCLOSURE; (7) FAILURE TO MAINTAIN CONFIDENTIALITY OF PATIENT HEALTHCARE RECORDS under Wisconsin law, Wis. Stat. § 146.81 et seq; (8) VIOLATIONS of the Wisconsin Deceptive Trade Practices Act, Wis. Stat. §§ 100.18, et seq; ~~(9) VIOLATIONS OF THE WISCONSIN PATIENT PRIVACY ACT, WIS. STAT. § 146.81 ET SEQ~~

Dan R. Drizin 11-23-23

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C. JURISDICTION



I am suing for a violation of federal law under 28 U.S.C. § 1331.

OR



I am suing under state law. The state citizenship of the plaintiff(s) is (are) different from the state citizenship of every defendant, and the amount of money at stake in this case (not counting interest and costs) is
\$ 5 million Dollars

D. RELIEF WANTED

Describe what you want the Court to do if you win your lawsuit. Examples may include an award of money or an order telling defendants to do something or to stop doing something.

EQUITABLE RELIEF ENJOINING DEFENDANT FROM ENGAGING IN THE WRONGFUL
conduct complained of HEREIN pertaining to the misuse AND/OR disclosure
OF THE PRIVATE INFORMATION OF PLAINTIFF

INJUNCTIVE RELIEF AND EQUITABLE RELIEF NECESSARY TO PROTECT THE
INTERESTS OF PLAINTIFF

AN AWARD OF DAMAGES, INCLUDING BUT NOT LIMITED TO, ACTUAL, CONSEQUENTIAL
DAMAGES, AND NOMINAL AS ALLOWED BY LAW IN AN AMOUNT TO BE
DETERMINED

ATTORNEYS FEE'S AND COSTS AND LITIGATION EXPENSES AS ALLOWED
PREJUDGMENT INTEREST ON ALL AMOUNTS AWARDED AND
SUCH OTHER AND FURTHER RELIEF AS THIS COURT MAY DEEM
JUST AND PROPER

E. JURY DEMAND

I want a jury to hear my case.

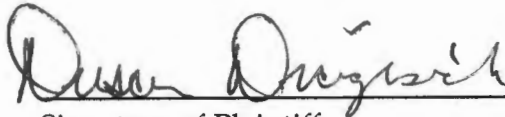
☒ - YES

☐ - NO

I declare under penalty of perjury that the foregoing is true and correct.

Complaint signed this 23RD day of NOVEMBER 2023.

Respectfully Submitted,



Signature of Plaintiff

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Plaintiff's Prisoner ID Number

OAKHILL CORRECTIONAL INSTITUTION

5212 COUNTY HIGHWAY 11.
OREGON, WI 97135

(Mailing Address of Plaintiff)

REQUEST TO PROCEED IN DISTRICT COURT WITHOUT PREPAYING THE FULL FILING FEE



I DO request that I be allowed to file this complaint without paying the filing fee. I have completed a Request to Proceed in District Court without Prepaying the Full Filing Fee form and have attached it to the complaint.



I DO NOT request that I be allowed to file this complaint without prepaying the filing fee under 28 U.S.C. § 1915, and I have included the full filing fee with this complaint.